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# CANADA TEMPERANCE ACT

OF  
1878

## SYNOPSIS, ETC.

The following Synopsis of the CANADA TEMPERANCE ACT, with instructions and suggestions as to how to proceed to secure its adoption, has been prepared for the use of those who desire a concise statement of the Provisions of the Act. Whilst all that is of practical value for general use is given, there are many details omitted. Persons needing more definite information are referred to the Act itself, Chap. 16, 41 Victoria, which can be seen by applying to any Justice of the Peace.

### PREAMBLE.

WHEREAS it is very desirable to promote Temperance in the Dominion, and that there should be uniform legislation in all the Provinces respecting the Traffic in Intoxicating Liquors ;

Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts, &c.

### EXPLANATORY.

Sections 1, 2, 3, of the Act, and 98 are explanatory, and may be summarized as follows :—

The Act may be cited as “The Canada Temperance Act, 1878.”

The expression “Intoxicating Liquor” means and comprehends any and every combination of liquors or drinks that is intoxicating.

A “County” includes every town, township, parish, and other division or municipality, except a city, within the territorial limits of the county, and also a union of counties where united for municipal purposes.

The Act repeals the first ten sections of the Dunkin Act, except in municipalities where the Dunkin Act by-law was in force when the Act became law (May 10, 1878).

Dunkin by-laws may be repealed, either as provided under the Dunkin Act, or by the provisions of this Act. (Section 98.)

If the Dunkin by-law is repealed in any municipality it cannot again be submitted.

The Dunkin by-law in force in any city or county is repealed *ipso facto* by the adoption of this Act, but no such repeal affects proceedings commenced under such Dunkin by-law, or any penalty inflicted by it.

## FIRST PART.

*Proceedings for bringing the Second Part of the Act into force.*

Sections 4 and 5 provide a form of petition to the Governor-General, with notice to the Secretary of State, and is as follows:—

*To the Honorable the Secretary of State for Canada:*

SIR,— We, the undersigned, electors of the county (or city) of \_\_\_\_\_, request you to take notice that we propose presenting the following petition to His Excellency the Governor-General, namely:

*To His Excellency the Governor-General of Canada in Council.*

The petition of the electors of the county (or city) of \_\_\_\_\_, qualified and competent to vote at the election of a member of the House of Commons in the said county (or city),

Respectfully sheweth that your Petitioners are desirous that the second part of "*The Canada Temperance Act, 1878*," should be in force, and take effect in the said county (or city);

Wherefore your Petitioners humbly pray that Your Excellency will be pleased, by an Order in Council under the ninety-sixth section of the said Act to declare that the second part of the said Act shall be in force and take effect in the said country (or city).

And your Petitioners will ever pray, &c.

And that we desire that the votes of all the electors of the said county (or city) be taken for and against the adoption of the said petition.

Section 6 provides for presenting the petition to the Secretary of State, with evidence that forms required have been complied with.

In acting under the above-named sections, 4, 5, 6, the following order of proceedings should be observed:—

1. Call a Convention of Delegates from different municipalities in a county, or from different wards in a city, to consider the propriety of submitting the Act to the vote of the Electors.

(Alliance Auxiliaries formed for the special purpose of uniting and concentrating the efforts of citizens with a view to the suppression of the Liquor Traffic, are appropriate mediums for calling these Conventions and carrying on the agitation; if there are not such auxiliaries in a city or county, a Temperance Organization or a Joint Committee of different organizations should act.)

If the Convention decides to proceed,

2. Organize a Central Committee to direct the campaign.

3. Appoint canvassers for each polling district.

4. Obtain from the person having control thereof, a list of the duly qualified Electors in the city or county, with a declaration certifying the number of Electors, and the correctness of the list furnished, as follows:

County of \_\_\_\_\_

To wit,

I,

, of the \_\_\_\_\_

tions and carrying on the agitation ; if there are not such auxiliaries in a city or county, a Temperance Organization or a Joint Committee of different organizations should act.)

1. If the Convention decides to proceed,

2. Organize a Central Committee to direct the campaign.

3. Appoint canvassers for each polling district.

4. Obtain from the person having control thereof, a list of the Electors duly qualified to vote for a member of the House of Commons, in the city or county.

5. Supply each Canvasser with copies of the above Petition and a list of the Electors in the district assigned to him.

6. Instruct each Canvasser

(1). To canvass every Elector duly qualified to sign, and to refuse the signatures of all other persons.

(2). To return to the Secretary of the County Committee the petition duly signed, and with the following declaration attached :

[DECLARATION BY WITNESS TO SIGNATURE.]

I, \_\_\_\_\_, of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_, do solemnly declare that I was present, and did see (*here give names of signers of petition*), sign the (*within or foregoing*) petition, and that the signatures (*repeat names of signers*) appended to said petition and numbered, (*give numbers 1, 2, 3, etc.*), are in the proper handwriting of the said (*repeat names of signers.*)

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Act passed in the thirty-seventh year of Her Majesty's Reign, intituled "An Act for the suppression of voluntary and extra-judicial oaths."

[A. B.

Declared before me,  
at \_\_\_\_\_ of \_\_\_\_\_  
in the County of \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_  
A. D. 188 \_\_\_\_\_

C. D.

(Justice of the Peace or other functionary authorized by law to receive the solemn declaration of any person voluntarily making the same before him under 37 Vic., chap. 37.)

N.B.—Where an elector is unable to sign and makes his mark in the presence of a witness, the above declaration may be varied to suit the case.



8. The Committee must satisfy themselves that, at least, one-fourth of all the duly qualified Electors have signed the Petition, and one of them should make the following declaration:—

[DECLARATION AS TO QUALIFICATION OF PERSONS SIGNING  
PETITION.]

I, \_\_\_\_\_, of the \_\_\_\_\_ of \_\_\_\_\_, do solemnly declare, that I have carefully compared the petition of certain electors of the county (or city) of \_\_\_\_\_ to His Excellency the Governor-General in Council, praying that the second part of "The Canada Temperance Act, 1878," should be in force, and take effect in the said county (or city) of \_\_\_\_\_ with the last certified Voters' List in force in the said county (or city) of \_\_\_\_\_, and that from such comparison I find that the persons who have signed said petition are persons named in the said Voters' List, and as I verily believe qualified and competent to vote at the election of a member of the House of Commons, in the said county (or city) of \_\_\_\_\_.

And I make this solemn declaration, etc., (*remainder as in previous declaration.*)

N.B.—The above declaration may relate to the whole or part of a petition. If it be made with respect to part of the petition only, it should be varied accordingly. Where a difference in spelling or otherwise exists between the signature as on the petition and the name as on the Voters' List, which it is desired to explain, a special declaration in explanation should be given.

When the canvass is complete and the Petition duly signed and returned to the Secretary of the Committee,

9. Give notice in two newspapers published in or nearest to the county or city, and by at least two insertions in each paper, that the petition will be deposited in the office of the Sheriff or Registrar of Deeds of or in the county or city, for public examination for ten days. The first notice must be two full weeks previous to day of deposit.

10. Deposit the Petition in the Office of the Sheriff or Registrar of Deeds of the county or city office for public examination, allowing it to remain ten full days, exclusive of day of deposit and of day of withdrawal.

11. Forward the Petition, with declarations before named, and also the following documents, to the Secretary of State:—

(a). A declaration, or certificate, by the Registrar, City or Town Clerk, Clerk of the Peace, or other proper custodian of the Voters' Lists, as to the number of electors in the county or city qualified and competent to vote at the election of a member of the House of Commons at the time of the deposit of the petition with the Sheriff or Registrar of Deeds.

(b). A duly certified copy of the Revised Voters' Lists in force in the county or city at the time of the deposit of the Petition with the Sheriff or Registrar of Deeds.

(c). A declaration, or certificate, by the Sheriff or Registrar of Deeds of or in the county or city named in the Petition, as to the date of the deposit of the Petition, and the time it remained in his office for public examination by any parties.

(d). Two copies of the two newspapers containing the notice previous to deposit of the Petition with the Sheriff or Registrar of Deeds.

### *Proclamation of the Governor-General.*

Section 7 provides in case it appears by evidence to the satisfaction of the Governor-General in Council that the requirements of the law have been complied with, His Excellency in Council may issue a proclamation under this part of the Act.

Section 8 provides that such proclamation shall be inserted at least three times in the *Canada Gazette*, and three times, at least, in the *Official Gazette* of the Province in which the county or city is situated.

Section 9 gives the particulars to be set forth in the proclamation, which are as follows :—

The notice with the Petition embodied in it ; the number of signatures ; the day of polling, the hours being from 9 a.m. to 5 p.m. ; the mode of voting by ballot ; the name of the Sheriff, Registrar, or other person appointed Returning Officer ; the power of the Returning Officer to appoint a Deputy at each polling place ; the place where, and the day and hour when, the votes of Electors will be summed up, and the result of polling declared, and the day on which the prohibitory clauses of the Act will go into force in the county or city, if such Petition is adopted.

No polling under this Act shall be held at the same time as any local or Dominion Election. Sections 10, 23 inclusive, provide that any Sheriff, Registrar, or any other person, may be appointed as Returning Officer, and define proceedings to be taken on receiving the proclamation for taking the vote.

Sections 24, 60 inclusive, provide for taking the vote in much the same way as that in the case of an Election for members for the House of Commons.

Sections 61, 76, provide for scrutiny of Ballots, for penalties for violation of Election laws, and the preservation of the peace.

Sections 77, 80, are

#### GENERAL PROVISIONS

providing that no person shall supply drink or other refreshment at his own expense to any Elector at any polling, or furnish or supply any ensign, standard, or set of colors, with intent that the same be carried or used, within eight days previous, or at the time of polling, as a party flag to distinguish the bearer thereof, and those who may follow the same, as the supporters of the opinions entertained by such person, in either interest, under penalty of a fine not exceeding \$100, or imprisonment not exceeding three months.

No spirituous liquors or drinks shall be sold or given at any hotel, tavern or shop within the limits of any polling district, during the whole of any day on which any poll is held, under a penalty of \$100 for every offence, in default, six months imprisonment.

Sections 81, 90, provide for the

#### PREVENTION OF CORRUPT PRACTICES.

Sections 91, 94, provide for penalties and punishments generally, to the following effect :—

Any Returning Officer or Deputy who refuses or neglects to do his duty, shall forfeit the sum of \$200.

All penalties and forfeitures other than fines shall be recoverable, with full cost of suit, by any person who will sue for the same by action of debt ; and in default of payment the offender shall be imprisoned in the Common Gaol for a term of not less than two years.

Every prosecution and action must be commenced within six months of the offence.

THE EFFECT OF DECISIONS BY VOTES OF ELECTORS  
are included in Sections 95, 97.

When one half or more of the votes polled are against the Petition, no similar Petition can be submitted for three years from the day of taking such vote.

When the Petition is adopted by a majority, the Governor-General, by proclamation, may declare the second part of this Act in force, to take effect in such county or city from and after the day on which the annual or semi-annual licenses then in force shall expire, provided such day be not less than ninety days from the day of the date of the Order in Council, and if it be less, then on the like day in the then following year.

The Act, when once adopted, cannot be repealed until after three years, and then only after one-fourth or more of the qualified Electors petition therefor, and after the submission of such petition and its adoption by a majority of the Electors, with all the forms and proceedings and manner of voting required for the submission and adoption of the original petition in favor of Prohibition.

Section 98 provides for repeal of By-laws passed under provisions of the Dunkin Act, by the same proceedings as are required for bringing this Act into force.

Section 99 comprises the

#### SECOND PART

of the Act, and provides for the PROHIBITION OF THE SALE OF INTOXICATING LIQUORS, except

1. *The sale of Wine for Sacramental purposes* by druggists and other vendors, as provided, and only on certificate of a clergyman that the wine is required for Sacramental purposes. (Subsection 3, Sect. 99.)

2. *The sale of Intoxicating Liquors for exclusively medicinal purposes, or for bona fide use in some art, trade or manufacture*, by some druggist or vendor, licensed by the Lieutenant-Governor of the Province; the number not to exceed one in a township or parish; two in a town; one for every four thousand inhabitants in a city.

For medicinal purposes, not less than one pint to be sold at one time, a certificate from a medical man, having no interest in the sale by the druggist or vendor, affirming that such liquor has been prescribed for the person named, is necessary.

For art, trade or manufacture, a certificate signed by two Justices of the Peace, of the *bona fides* of the application that the liquor is only to be used for the particular purposes set forth in the affirmation, is required.

Druggists and vendors must file certificates, keep a register of such sales, with the names of purchasers and the quantity of liquor sold, and make an annual return of all such sales to Collector of Inland Revenue. (Section 99, Sub. Sect. 4.)

3. *In wholesale quantities*, not less than ten gallons, or in case of ale or beer, not less than eight gallons.

The persons allowed to sell in wholesale quantities are:—

(a). The producers of cider in the county. (Section 99, Subsection 5.)

(b). Licensed distillers and brewers in the city or county. (Sect. 99, Subsection 5.)

(c). Incorporated companies authorized by law to carry on the business of cultivating and growing vines, and of making and selling wines and other liquors produced from grapes, having the manufactory within the city or county. (Section 99, Subsection 6.)



(d). Manufacturers of pure native wines made from grapes, grown and produced by them in Canada, when authorised to do so by license from the Municipal Council, or other authority, having jurisdiction where such manufactory is carried on. (Sect. 99, Subsection 7.)

(e). Merchants or traders duly licensed, but only to druggists and other vendors licensed, or to such person as they have reason to believe will carry the same beyond the limits of County or city, or of any adjoining city or County in which the Act is in force, to be wholly removed or taken away at one time. (Section 99, Subsection 8.)

It is incumbent on producers of cider, distillers, brewers, manufacturers, merchants, or traders, to furnish satisfactory evidence of having good reason to believe that liquor sold by them in wholesale quantities would be removed beyond the limits of the County or city, and of any adjoining County or city in which the Act is in force. (Section 99, Subsection 9.)

### THIRD PART.

#### *Penalties and Prosecutions.*

Section 100.—Any person who sells in violation of the above provisions is liable to a penalty on conviction of not less than \$50 for the first offence, and not less than \$100 for the second offence, and for each subsequent one imprisonment for a term not exceeding two months. (By Chap. 31, Sect. 62, Statutes of Canada, 1869, if the fine cannot be levied, the party may be imprisoned for a term not exceeding three months.)

An Agent or Clerk is held equally guilty with the principal.

Liquor and vessels containing the same to be forfeited.

Sections 101, 102 make it the duty of the Collector of Inland Revenue to bring the prosecutions. It is also the privilege of any person.

Sections 103, 104, 105, 106 state before whom prosecutions may be brought, and make sundry provisions.

Section 107. Every offence against this Act may be prosecuted as directed by the Act respecting the duties of Justices of the Peace out of Sessions, in relation to summary convictions and orders.

Section 108. Authorizes Magistrates to grant warrant to search for liquor on receiving certain information on oath.

Section 109. Liquors (twenty gallons) and vessels containing the same may be utterly destroyed.

Section 110. Heavy penalties for tampering with witnesses.

Section 111. No appeal or certiorari in certain cases.

Sections 112, 113. Imprisonment for attempt to compromise.

Section 114. Penalties for tampering with witnesses.

Section 115. What is necessary in describing offences.

Section 116. Convictions may be obtained for various offences.

Section 117. Convictions not invalid for informality of procedure.

Section 118. Application to quash conviction to be decided on its merits.

Section 119. The keeping of liquor for sale shall be inferred under certain circumstances.

Section 120, 121. Not necessary to prove money paid or liquor consumed to secure conviction.

Section 122 to 124. Sundry provisions.

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